C.f 8107

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 369 /2003

APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

Appellant : Arjun Singh, S/o Trilok Singh
aged about 45 years,
Occupation - Agriculturist
R/o Kumhi, Tah. Berla,
Distt. Durg (C.G.)

VERSUS

Respondents :

1. Smt. Kumari Bai,
W.o Ramkhilawan
aged about 35 years,
Caste - Kshatriya
Occupation - Agriculturist
R/o Bramhapuri, Tah.
and Distt. Raipur (C.G.)
2. Bhuvan Singh, S/o Trilok Singh
aged about 30 years,
Occupation - Agriculturist
R/o Kumhi, Tah. Berla,
Distt. Durg (C.G.)
3. Jambai, W/o Late Makhan Singh
Caste - Kshatriya, Occupation
Agriculturist, R/o Khajri,
Tah. Berla, Distt. Durg (C.G.)
4. Dulari Bai, W/o Late Narad Singh
Caste - Kshatriya
aged about 40 years,
R/o Navagaon, Tah. Saja
Distt. Durg (C.G.)

P. R. No. 13468/03
Presented by Shri Sudhir Verma
dated 13.06.03

Contd.....2

5. Pavan Kumar, S/o Ujiyar Singh
Caste - Kshatriya,
R/o Gram Nyay General Store
Shop No. 38, Civic Centre,
Indra Palace, Bhilai Nagar,
Durg (C.G.)

6. Sakun Bai @ Baby,
W/o Lokeshwar Singh
aged about 19 years,
R/o House No. 22, Street No. 37
Sector-2, Bhilai Nagar,
Distt. Durg (C.G.)

7. Ujiyar Singh, S/o Aan Singh
aged about 50 years,
R/o Gram Khara Tah. Berla,
Distt. Durg (C.G.)

Sd/-

Being aggrieved by impugned judgement and decree dated 17.01.2003 passed by learned Second Additional District Judge, Bemetara, in civil appeal No. 47-A/2002, appellant prefer this memorandum of appeal on following facts and grounds amongst others :-

FACTS OF THE CASE

5. Pavan Kumar, S/o Ujiyar Singh
Caste - Kshatriya,
R/o Gram Nyay General Store
Shop No. 38, Civic Centre,
Indra Palace, Bhilai Nagar,
Durg (C.G.)

6. Sakun Bai @ Baby,
W/o Lokeshwar Singh
aged about 19 years,
R/o House No. 22, Street No. 37
Sector-2, Bhilai Nagar,
Distt. Durg (C.G.)

Amended as per Court order dated 2-12-03
11/12/03
Attested
Sd/-
ARCJ(

**(8) State of Chhattisgarh
Through,
Collector
Distt.- Durg (C.G.)**

Being aggrieved by impugned judgement and decree dated 17.01.2003 passed by learned Second Additional District Judge, Bemetara, in civil appeal No. 47-A/2002, appellant prefer this memorandum of appeal on following facts and grounds amongst others :-

FACTS OF THE CASE

(84)

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 369 of 2003

Arjun Singh

-Versus-

Smt. Kumari Bai & others

POST FOR ORDER ON 16.04.2004

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 369 of 2003

Arjun Singh

-Versus-

Smt. Kumari Bai & others

Appellant by Shri Sudhir Verma, Advocate.

JUDGEMENT

(Delivered on 24/April, 2004)

By Justice L. C. Bhadoo;

1. Arjun Singh, Defendant No.1 in the original Suit (here in after referred as appellant) has filed this Civil second appeal being aggrieved by the Judgment and decree dt.17.01.2003 passed by the Second Additional District Judge (Fast Track Court), Bemetra in Civil Appeal No.47-A/2002, whereby learned Additional District Judge while allowing the appeal of the plaintiff Smt Kumari Bai, reversed the judgment and the decree of the trial Court and decreed the plaintiff's suit.

2. Brief facts necessary for the disposal of this Civil Second Appeal are that the respondent No.1 herein was plaintiff in the original Suit. She filed a Suit through her husband Ram Khilawan, Power of attorney holder, against the present appellant and six others for partition and possession and mesne of the property described as A, B, and C in para 3 and 4 of the plaint; left by her late father

(36)

Trilok Singh and mother Benu Bai. Written statement was filed on behalf of the respondents No.1, 2 & 4 and respondents No.3, 5 & 6. After framing the issues learned trial Court declared the plaintiff share, for which she is entitled, however, dismissed the Suit on the ground that Ram Khilawan, power of attorney holder, husband of the plaintiff, was required to prove that he is legally authorized power of attorney holder to file the suit. Even though he has produced the power of attorney but he has not proved the same therefore, it cannot be considered that said Ram Khilawan is legally appointed power of attorney holder, and ultimately it cannot be held that the Suit has been actually filed by the plaintiff. Since said Ram Khilawan has not been able to prove that he is legally appointed power of attorney holder of the plaintiff, therefore, he is not entitled to file the suit, and as such the suit filed by him on behalf of the plaintiff is without authority and ultimately learned trial Court dismissed the suit.

3. Aggrieved by the said judgment and decree dated 7.4.1995 passed in Civil Suit No. 30-A/94, Ram Khilawan, husband of plaintiff Smt. Kumari Bai preferred an appeal before the 6th Additional District Judge, Durg, Bemetra and vide impugned judgment and decree learned Additional District Judge allowed the appeal after holding that since the defendants had not raised any objection about the maintainability of the suit and about the authority of power of attorney holder to file the suit and no issue was framed on that count, therefore, the finding of learned trial Court on this ground is illegal. It has further been held that the finding of the trial Court that the suit is not legally signed, verified and constituted is not correct and ultimately allowed the appeal and

decreed the plaintiffs' suit, as no cross appeal was filed by the defendants challenging the finding of issues which were decided in favour of the plaintiff.

4. I have heard learned counsel for the appellant.

5. In order to entertain this civil second appeal the appellant is required to establish that the First Appellate Court has committed material illegality in arriving at the finding and this appeal involves a substantial question of law therefore it should be admitted on that substantial question of law. Learned counsel for the appellant argued that the trial Court has rightly dismissed the suit of the plaintiff as the same was not filed by a legally competent and authorized person, as per the requirement of the law.

6. I have perused the judgment of the trial Court as well as the appellate Court, records of both the court below and the statement of Ram Khilawan Singh, power of attorney holder of the plaintiff recorded by the trial Court.

7. As mentioned above, the suit was filed by Ramkhilawan Singh, husband of plaintiff Smt. Kumari Bai, in the capacity of power of attorney holder. The plaint was signed and verified by him in the capacity of power of attorney holder in consonance with the requirements of Rule 14 and 15 of Order 6. Rule 14 prescribes that every pleading shall be signed by the party and his pleader (if any): provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Therefore, the requirement

of the law is that in the absence of the plaintiff, the pleading can be signed by any person duly authorized by him or her by reason of absence or for other good cause unable to sign pleading.

8. In this case, the plaintiff had appointed her husband as power of attorney, who had filed the power of attorney alongwith the plaint, signed the pleading in conformity with Rule 14 of Order 6. Further, he had also verified the pleadings in conformity of the Rule 15 of Order 6. Even before the trial Court the power of attorney holder of plaintiff namely Ram Khilawan(P.W.1) had stated that he has signed the suit in the capacity of power of attorney holder of his wife/plaintiff. Therefore, there was no infirmity in the signing of the plaint and verifying the same as per Rule 14 and 15 of the Order 6. The signing of pleading is merely a matter of procedure and it is immaterial whether it is signed by the plaintiff or someone else on her behalf as has been held in the case of Sarju Vs. Badri, reported in AIR 1939 Nagpur 242, and it would be unfair and unjust to reject the plaint merely on the ground that the plaint was not properly signed and verified when the plaintiff's husband came to the witness box and made out the case in the plaint as has been held in the case of Kailash Singh Vs. Hiralal Dey, reported in AIR 1994 Gauhati 12, and omission to sign or defect in signature or verification may be cured at any stage by amendment. On the contrary in this case the pleading was signed and verified by the power of attorney holder of the plaintiff and he has appeared in the Court and stated that he has filed the suit on behalf of the his wife (plaintiff). Therefore, the finding of the trial Court was not in consonance with the provisions of the Civil Procedure Code.

9. More over it is surprising that how the trial Court took up this point and decided against the plaintiff when no such objection was raised on behalf of the defendant and even no issue was framed in this regard. Therefore even if the power of attorney was not tendered into evidence even then that was not going to make any difference. Therefore, in view of the above the finding of the trial Court was illegal and the judgment and decree of the first appellate Court in reversing the judgment and decree of the trial Court is legal and the first appellate Court has not committed any illegality in reversing the finding of the trial Court and in my opinion what to talk of substantial question of law, even the question of law is not involved in this appeal. This appeal is liable to be dismissed as no substantial question of law is involved in this matter for decision of this Court, therefore the same is dismissed.

Sd/-
L.C. Bhadoo
Judge